

J. Morgan Philpot (Utah Bar No. 11855)  
morgan@jmpilpot.com  
*Attorney for Defendant, Gary Mark Hill*  
JM PHILPOT LAW, PLLC  
620 East 100 North  
Alpine, UT 84004  
(801) 810-8369

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,  
*Plaintiff,*  
v.  
GARY MARK HILL,  
*Defendant.*

Case No. 2:18-CR-00254-DAK  
**MOTION TO SUPPRESS**  
*Evidentiary Hearing & Oral Argument is Requested*  
Judge: Dale A. Kimball

Under local rule DUCrimR 12-1(e), a motion to suppress which also requests an evidentiary hearing, “shall state with particularity and in summary form without an accompanying legal brief the following: (i) the basis for standing; (ii) the evidence for which suppression is sought; and (iii) a list of the issues raised as grounds for the motion.” The rule also provides that, “[u]nless the court otherwise orders, ***neither a memorandum of authorities nor a response by the government is required.*** At the conclusion of the evidentiary hearing, the court will provide reasonable time for all parties to respond to the issues of fact and law raised in the motion unless the court has directed pretrial briefing or otherwise concludes that further briefing is unnecessary.” (Emphasis added.)

**I. Basis for Standing**

In early 2017, Defendant, Mr. Hill, was arrested and while in federal custody, he was interrogated by federal officers. The government created a video and audio recording of the interrogation. During the early stages of the interrogation, Defendant unambiguously expressed

his desire to be cooperative, but only through legal counsel. Rather than end the interrogation, federal agents coerced Defendant into continuing the interrogation by making a series of false and misleading statements and/or promises. By asserting his right to counsel, Defendant invoked fundamental constitutional rights and established his standing to bring this motion to suppress under, *inter alia*, the Fifth Amendment, as explained in *Berghuis v. Thompkins*, 560 U.S. 370, 387-88 (2010); *Miranda v. Arizona*, 384 U.S. 436 (1966) and *United States v. Cash*, 733 F.3d 1264, 1277 (10th Cir. 2013). Evidence obtained as a result of a custodial interrogation after an individual requested an attorney must be suppressed. See *Edwards v. Arizona*, 451 U.S. 477, 479-80 (1981); *United States v. Yepa*, 862 F.3d 1252, 1257 (10th Cir. 2017), cert. denied, 138 S. Ct. 1262 (2018).

## **II. The Evidence for Which Suppression is Sought**

Defendant seeks to suppress his statements made during the custodial interrogation and all investigative and evidentiary fruits derived therefrom.

## **III. List of the Issues Raised as Grounds for the Motion**

Issue #1: During a custodial interrogation, Defendant unambiguously invoked his right to proceed only after consulting with an attorney.

Issue #2: Government agents, fully aware of Defendant's invocation of his constitutional rights, failed to cease interrogation, and instead used coercion and false statements to keep Defendant talking during the subsequent, extensive interrogation.

## **IV. Timeliness of this Motion**

This motion is timely. Rule 12(b)(3)(C) of the Federal Rules of Criminal Procedure requires that suppression motions be made before trial where "the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits." *Id.* Local

Rule DUCrimR 12-1(a) requires that pretrial motions be filed “not later than fourteen (14) days before trial, or at such other time as the court may specify.” *Id.* The court’s trial order in this matter, see Doc. No. 17, does not provide a deadline for motions to suppress.

Dated this 5th day of November 2018.

JM Philpot Law, PLLC

/s/ J. Morgan Philpot  
J. Morgan Philpot, USB #11855  
Attorney for Defendant, Gary Mark Hill

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 5, 2018 a true and correct copy of the foregoing  
**MOTION TO SUPPRESS** was served as set forth below:

J. Drew Yeates (USB #9811)	[ <input type="checkbox"/> ] U.S. Mail
Assistant United States Attorney	[ <input type="checkbox"/> ] Federal Express
Isaac C. Workman (USB # )	[ <input type="checkbox"/> ] Hand-Delivery
Assistant United States Attorney	[ <input type="checkbox"/> ] Fax
111 S. State Street, Suite 1800	[ <input type="checkbox"/> ] Email
Salt Lake City, UT 84111	[ <input checked="" type="checkbox"/> ] Court Aprv'd e-filing
(801) 524-5682	

drew.yeates@usdoj.gov

JM PHILPOT LAW, PLLC

*/s/ J. Morgan Philpot*  
J. Morgan Philpot  
*Attorney for Defendant*